

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

ANDY SCOTT KINCAID,

Plaintiff,

v.

CIVIL ACTION NO. 1:17-01096

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Cheryl A. Eifert for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge Eifert submitted to the court her Proposed Findings and Recommendation ("PF&R") on May 25, 2018, in which she recommended the matter be remanded for further administrative proceedings. ECF No. 16.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to the magistrate judge's PF&R. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. See Snyder v. Ridenour, 889 F.2d 1363 (4th Cir.

1989).

Neither party has filed any objections to the magistrate judge's PF&R within the required time period. Accordingly, the court adopts the factual and legal analysis contained within the PF&R as follows:

1. Plaintiff's request for judgment on the pleadings is **GRANTED**, to the extent that it requests remand of the Commissioner's decision, (ECF Nos. 11, 12).
2. Defendant's request to affirm the decision of the Commissioner is **DENIED**, (ECF No. 15).
3. The final decision of the Commissioner is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings to:
 - a. Assess all significant evidence pertaining to claimant's intellectual impairment compared to the three-pronged criteria of Listing 12.05C (or § 12.05C);
 - b. Reconsider, elaborate upon, or explain the ALJ's rejection of Dr. Kropac's medical opinion regarding claimant's ability to sit, stand, and walk; and
 - c. Reconsider or elaborate upon the ALJ's assessment of claimant's residual functioning capacity regarding his moderate difficulty in maintaining

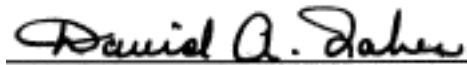
concentration, persistence, or pace.

4. The Clerk is directed to remove this case from the court's docket.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 5th day of July, 2018.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge